



**Marsha J. MacBride**

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November 2, 2004

**Ex Parte Communication**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20445

*Re:* CS Docket No. 98-120  
MB Docket No. 03-15

Dear Ms. Dortch:

Today Ann Bobeck and the undersigned met with Commissioner Kevin Martin and Elizabeth Andrion to discuss the digital television transition in the above-referenced dockets. NAB answered questions about the broadcasters' DTV transition plan filed on October 29, 2004. We also contrasted the broadcasters' plan with the Media Bureau's plan to calculate the 85 percent household penetration by including down-converted at cable-headend signals, and their respective effects on the DTV transition. Finally, we discussed the positions of the committee leadership on the Hill, including their correspondence with the FCC (see attachments).

Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Marsha J. MacBride". The signature is written in a cursive, flowing style.

Marsha J. MacBride

cc: The Hon. Kevin J. Martin  
Elizabeth Andrion  
Attachments

002/000

**Congress of the United States**  
**Washington, DC 20515**

March 25, 2004

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Mr. Chairman:

There has been recent speculation that the Federal Communications Commission is contemplating radically redefining which consumers are classified as counting towards the statutorily mandated 85% digital television consumer adoption threshold. By categorizing viewers who receive from their cable system a "down-converted" digital broadcast signal in analog format as "**digital viewers**," the plan would lift many markets above the 85% trigger and force premature cessation of analog transmission.

I am concerned that this proposal would produce severe unintended policy consequences and would directly contravene the legislative intent of Congress. If that is the case it must be rejected outright.

Premature cessation of analog broadcasting would render useless the 81 million television sets that rely upon over-the-air reception and, more importantly, would disenfranchise the 15 million television households that rely exclusively upon over-the-air reception for their television signals. However, gutting the 85% standard, as you well know, would have the apparently intended effect of making 2006 a hard date to shut-off analog TV stations. This would occur even before the tuner mandate has been completed (2007), let alone given time in the marketplace to diminish the ten's of millions of analog-only TVs that would go dark. Pairing a more realistic hard-date with both a sensible cable carriage plan and marketplace acceptance of the FCC's tuner mandate would make more sense.

Equally disconcerting, this proposal would betray the long held Congressional goal of bringing the next generation of television to the American consumer. Consumers who receive a down converted, analog formatted digital signal via cable do not experience any of the benefits of digital television, most notably high-definition viewing and enhanced programming options. Withholding from viewers the benefits of digital television would provide no incentive for consumers to eventually upgrade to digital displays and high-definition digital sets and consumer adoption of DTV

The Honorable Michael K. Powell  
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technology would stagnate. Essentially, this would mean that the billions of dollars the affected industries and the government have already invested in this watershed change would be wasted.

Congress' 1997 adoption of the 85% consumer safeguard recognized that consumer acceptance of DTV technology is a linchpin to successful completion of the DTV transition. While I share your commitment to seeing the digital television transition completed and analog television spectrum freed up for other uses, radically modifying this statutorily mandated consumer protection would be imprudent, impractical and run afoul of Congressional policy goals.

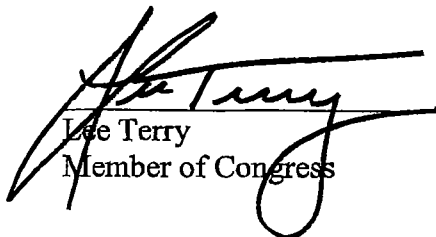
Sincerely,



Charlie Norwood  
Member of Congress



Richard Burr  
Member of Congress



Lee Terry  
Member of Congress

# Congress of the United States

## House of Representatives

Washington, DC 20515

September 17, 2004

Chairman Michael Powell  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Dear Chairman Powell


Recent reports indicate that just days after the national election this November, the Federal Communication Commission (FCC) will consider a plan (commonly referred to as the "Ferree" or "Mass Media Bureau" plan) that will effectively end free, over-the-air analog television as we know it in 2009. We urge you not to take action on such a controversial issue that is of critical importance to our constituents and all Americans.

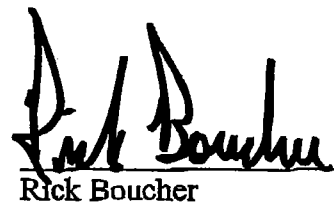
The crux of this plan eviscerates Congressional action and current law by turning the 85% set penetration standard on its head. As you know, Congress inserted this standard into the 1996 Balanced Budget Act to ensure that consumer acceptance of new digital signals and digital equipment, not budget priorities, would determine when our constituent's analog television sets would no longer work. You are obligated, as the Chairman of the Commission, to act within the framework established by Congress. The "Ferree" plan contradicts both federal law and Congress's intent by ignoring the 85% "household" test in favor of a cable "head-end" interpretation.

Any action by the Commission to take steps contrary to an Act of Congress would be unlawful and unwise. Indeed, abandoning Congress's 85% standard without simultaneously developing a comprehensive policy to address the estimated **70 million** analog legacy sets would be illegal as a matter of law and reckless as a matter of public policy. Accordingly, we implore you to postpone this vote until further Congressional hearings and discussions with your agency can be held.

We hope you will give this matter your utmost attention and look forward to a response from your office on or before October 8<sup>th</sup>.

Sincerely,

  
Frank Pallone, Jr.

  
Rick Boucher

Cc: Commissioners Copps, Abernathy, Adelstein and Martin

*From Communications Daily, Friday, October 1, 2004*

### **Barton Opposes Spectrum Amendment, Favors Comprehensive Bill**

House Commerce Committee Chmn. Barton (R-Tex.) told us Thurs. he wouldn't support the McCain-Burns compromise approved Wed. (CD Sept 30 p1) to set a deadline for the return of public safety spectrum. Barton said he believed the matter should be addressed, but in comprehensive DTV transition legislation to be taken up in the House Commerce Committee next year, not as an amendment to a bill on intelligence reforms.

By voice vote, the Senate approved Wed. a compromise version of legislation that would force some broadcasters off analog spectrum in favor of public safety uses. The amendment, added to legislation on 9/11 Commission (S-2485), would set a Jan. 1, 2008, deadline for broadcasters that reside in 764-776 MHz (channels 63,64) and 794-806 MHz (channels 68,69). Several Univision and Paxson stations use these channels, along with a few other broadcasters. The 9/11 Commission report recommended that additional spectrum be made available for public safety uses.

Broadcasters supported language pushed by Senate Communications Subcommittee Chmn. Burns (R-Mont.) as an alternative to the SAVE LIVES Act pushed by Senate Commerce Committee Chmn. McCain's (R-Ariz.), which would have set a 2009 deadline for all broadcasters to vacate the analog spectrum. The Burns amendment was similar to the HERO Act (HR-1425), pushed by Rep. Harman (D-Cal.), that would have set a 2006 deadline for all broadcasters in the band designated for public safety. NAB opposed that legislation.

NAB didn't return calls for comment. Several industry and congressional sources said NAB would rather not see any deadline. However, while Barton's opposition could stave off a deadline for now, recent hearings on the DTV transition showed Barton wasn't sympathetic to concerns over a deadline. Barton questioned why the original Dec. 31, 2006, deadline couldn't be met (CD June 3 p4) and he recently told the MSTV conference he still supports some form of hard deadline for broadcasters to vacate the spectrum (CD Sept 29 p5).

The amendment crafted a compromise to what some observers said was a loophole in the amended version of Senate Commerce Committee Chmn. McCain's (R-Ariz.) SAVE LIVES Act. Instead of allowing the FCC to grant a waiver in the event of "consumer disruption," which was originally proposed, the amendment now requires public safety organizations make a "bonafide request" for the spectrum before the FCC takes action. Critics of the "consumer disruption" clause said there would clearly be some consumer disruption for any station forced to vacate the airwaves, so a waiver could be granted in almost any case. The new language requires public safety entities to tell the FCC they need the spectrum, which would lead to removal of the broadcasters in that spectrum band.

The amendment didn't include a provision pushed by Sen. Lautenberg (D-N.J.) that would have required the FCC to set up public interest requirements for DTV broadcasters. The measure was added to the SAVE LIVES Act last week and is supported by FCC Comr. Copps. It's opposed by NAB and Clear Channel. -- Terry Lane